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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/621,379

07/18/2003

Peter Flohr

003-065

4058

36844

7590

07/06/2006

CERMAK & KENEALY LLP  
515 E. BRADDOCK RD  
SUITE B  
ALEXANDRIA, VA 22314

EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/621,379

Applicant(s)

FLOHR ET AL.

Examiner

Charles E. Cooley

Art Unit

1723

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 22 June 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 10-15 and 17.

Claim(s) withdrawn from consideration: NONE.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).


10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached letter.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

  
Charles E. Cooley  
Primary Examiner  
Art Unit: 1723

## **ADVISORY ACTION**

1. Applicant's primary argument is that the applied prior art to Schulte-Werning, Althaus '982, and Althaus '311 do not disclose introducing the secondary flow into the main flow via an axial "impulse". The examiner has reviewed the intrinsic record and finds nothing therein to prevent the examiner from determining that the secondary flow of fluid through the vortex generators in Schulte-Werning, Althaus '982, and Althaus '311 is not an axial impulse, within the broad scope of the claims and in view of the prosecution history. The instant specification was reviewed and is utterly deficient regarding the parameters of what constitutes an "impulse". The duration of said impulse (or any parameters thereof, for that matter) are not specified whatsoever by the originally filed specification. In light of the non-limiting nature of the intrinsic record on this issue, the examiner holds that the secondary flow of fluid through the vortex generators of Schulte-Werning, Althaus '982, and Althaus '311 can be termed an impulse whether the duration be 3 microseconds, 3 hours, or 3 days within the immense scope of the pending claims (e.g., during a combustion sequence/operation where secondary fluid such as fuel is introduced as a secondary flow as in Althaus '982 can be termed an impulse or between on/off cycles in any of the prior art can also be deemed an impulse).

Accordingly, when examining the disputed claim limitation "impulse" within the context of the claimed invention and the application, the claim term "impulse" is not defined with any specificity in the specification and therefore the intrinsic record fails to limit the disputed claim term in the manner that Applicant asserts and thus the prior art

Art Unit: 1723

rejections remain valid and are maintained up to and including appeal. See *Phillips v. AWH Corp.*, 415 F.3d 1303 (7/12/05) (*En Banc*) (Lourie, concurring-in-part, dissenting-in-part; Mayer, dissenting).

As set forth during this prosecution, the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). Since the specification fails to define the parameters of said "impulse", it is incumbent upon the examiner to adopt the meaning of a disputed claim term based upon the scope of the term in the intrinsic record. Since the scope of the term "impulse" is indeed unrestricted, the examiner must adopt a broad meaning imparted to the term as outlined above.

The Notice of Appeal filed 22 JUN 2006 is acknowledged. 37 CFR 41.37(a) provides 2 months from the date of the notice of appeal for the appellant to file an appeal brief and the appeal brief fee set forth in 37 CFR 41.20(b)(2). The usual period of time in which appellant must file his or her brief is 2 months from the date of appeal. The Office date of receipt of the notice of appeal (and not the date indicated on any Certificate of Mailing under 37 CFR 1.8) is the date from which this 2-month time period is measured. See MPEP § 512. If the notice of appeal is filed in accordance with 37 CFR 1.10 using the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS), the date of deposit with the USPS is the date from which this 2-month time period is measured because the date of deposit shown by the "date in" on the "Express Mail" label or other official USPS notation is considered to be the date of receipt. See MPEP § 513. This 2-month time period for a patent application

Art Unit: 1723

may be extended under 37 CFR 1.136(a), and if 37 CFR 1.136(a) is not available, under 37 CFR 1.136(b) for extraordinary circumstances.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles" followed by a stylized flourish.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

26 June 2006